

Green, LindaE

From: Margaret Townsend <mtownsend@biologicaldiversity.org> on behalf of foia@biologicaldiversity.org
Sent: Wednesday, March 15, 2017 1:41 PM
To: FOIA HQ
Cc: foia@biologicaldiversity.org
Subject: FOIA APPEAL: EPA-HQ-2017-004360 (Pruitt Correspondence)
Attachments: 2017.03.15 Appeal to EPA FOIA Denial RE EPA-HQ-2017-004360 Pruitt Corres....pdf

Dear FOIA Officer:

Please find the attached appeal letter from the Center for Biological Diversity for the above-referenced FOIA Request.

If you could please confirm receipt of this appeal, we would appreciate it.

Thank you,

Margaret E. Townsend
Open Government Staff Attorney | Endangered Species Program
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
Office: (971) 717-6409
Fax: (503) 283-5528
mtownsend@biologicaldiversity.org

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March 13, 2017

VIA ELECTRONIC MAIL

U.S. Environmental Protection Agency

hq.foia@epa.gov

Re: FOIA APPEAL: EPA-HQ-2017-004360 (Pruitt Correspondence)

Dear FOIA Officer:

On behalf of the Center for Biological Diversity (“Center”), I appeal the U.S. Environmental Protection Agency’s (“EPA”) response to the Center’s request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), assigned FOIA Request No. EPA-HQ-2017-004360 (“FOIA Request”). For the reasons set forth below, the EPA has violated FOIA by improperly withholding responsive records without conducting a sufficient records search.

You have 20 working days to respond to this appeal. You are advised that the Center intends to pursue legal action if the EPA refuses to disclose all responsive records without further delay, in accordance with FOIA’s disclosure mandate and federal policies, or at a minimum, to justify withholding this information from disclosure.

FACTUAL BACKGROUND ABOUT THE CENTER’S FOIA REQUEST

On February 28, 2017, the Center sent a FOIA request to the EPA through the online FOIA portal, FOIAOnline.Regulations.gov. Attachment A (The Center’s February 28, 2017 FOIA Request to EPA). In its request, the Center sought all of the following records from the EPA since February 17, 2017:

[A]ll correspondence, including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by the new EPA Administrator Scott Pruitt (“Mr. Pruitt”) from any and all agency and EPA servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to or from Mr. Pruitt, with the exception of any records that are or will be publicly available (e.g., through regulations.gov).

Id. The Center noted that it was “not requesting the actual email addresses utilized by Mr. Pruitt in the course of his official duties, but only the correspondence sent to and from his email

addresses,” and clarified that it “seeks records of Mr. Pruitt’s correspondence on EPA accounts or otherwise addressing work-related matters, all of which are ‘agency records.’” *Id.*

On February 28, 2017 the Center received an automated confirmation that the EPA had received the FOIA Request. Attachment B (EPA’s February 28, 2017 Confirmation Email).

The Center received an additional email dated March 1, 2017 from EPA Officer Jonathan Newton informing the Center of the following:

Unfortunately, EPA cannot process your request at this time as it does not reasonably define a set of records to search as required by the FOIA and EPA regulations. 5 U.S.C. § 522(a)(3); 40 C.F.R. § 2.102(c). EPA regulations state that “whenever possible requesters should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter,” and also that “[t]he more specific you are about the records or type of records you want, the more likely EPA will be able to identify and locate records responsive to your request.” 40 C.F.R. § 2.102(c). Your request fails to provide necessary details such as key terms, subject matters or titles.

Attachment C (EPA’s March 1, 2017 Request Denial Email). The EPA informed the Center that it may “contact Victor Farren at farren.victor@epa.gov or (202) 564-0808, to clarify” the FOIA Request, or it may withdraw and resubmit the request “with sufficient specificity to allow EPA to search for responsive records.” *Id.*

After receiving Mr. Newton’s email, Margaret Townsend called Mr. Farren on behalf of the Center to discuss the EPA’s issues with the FOIA Request. In that phone call, Mr. Farren told Ms. Townsend that it was the EPA’s position that the Center failed to properly describe the requested records such that it would be difficult for the EPA to conduct a search. Ms. Townsend maintained that the request was detailed and specific, seeking all correspondence from one records custodian, Mr. Pruitt, since February 17, 2017. Mr. Farren indicated that the Center would need to specify subject matters for the search. Ms. Townsend said that the subject matter was Mr. Pruitt’s conducting of official business, and that the specified date range was sufficiently narrow. At the end of the call, Ms. Townsend said that the Center would consider ways that it might be able to clarify its request, if possible. Upon further consideration, Ms. Townsend called Mr. Farren back and requested that the EPA send the Center a final determination denying the Center’s request, on the basis indicated by Mr. Newton.

The EPA responded by sending a denial letter to the Center on March 2, 2017. Attachment D (EPA’s March 2, 2017 Denial Letter). In its letter, the EPA stated that it is denying the Center’s FOIA Request because the Center:

[D]oes not reasonably define a set of records to search as required by the FOIA and EPA regulations. 5 U.S.C. § 522(a)(3); 40 C.F.R. § 2.102(c). EPA regulations state that “whenever possible requesters should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter,” and also that “[t]he more specific you are about the records or type of records you want, the more likely EPA will be able to identify and locate records responsive to your request.” 40

C.F.R. § 2.102(c). Your request fails to provide necessary details such as key terms, subject matters or titles.

Id. EPA further stated that:

The Office of the Administrator sent you an email on March 1, 2017 indicating that the EPA could not process your request given that it did not reasonably define a set of records to search. The email also provided you with an opportunity to further clarify your request. You telephoned me the same day, reiterating the terms of your request, along with the contention that the request reasonably defined a set of records subject to search. Since the EPA cannot process your request as currently constructed, your request is being denied.

Id. The Center appeals the EPA's denial of its FOIA Request.

DISCUSSION

I. THE EPA'S DENIAL OF THE CENTER'S FOIA REQUEST WAS IMPROPER.

It was improper for the EPA to deny the Center's FOIA Request because the Center's FOIA Request "reasonably described" the records that the Center seeks. 5 U.S.C. § 552(a)(3)(A). "The linchpin inquiry" on this issue is "whether 'the agency is able to determine precisely what records are being requested.'" *Tereshchuk v. Bureau of Prisons*, 67 F. Supp. 3d 441, 454 (D.D.C. 2014) (quoting *Yeager v. DEA*, 678 F.2d 315, 326 (D.C. Cir. 1982)).

Moreover, the EPA's FOIA Regulations provide that a "request *should* reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them," and that "[w]henever possible, [a] request *should* include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter." 40 C.F.R. § 2.102(c) (emphasis added). EPA's FOIA guidance does not require that requesters provide all of the information but, instead, asks that requesters provide it "whenever possible." *Id.*

In the FOIA Request letter, the Center sought all correspondence by and to Mr. Pruitt since February 17, 2017. The Center limited the scope of the records it sought to the time period between February 17, 2017 and the date of the search. *See Public Citizen v. Dep't of State*, 276 F.3d 634, 642 (D.C. Cir. 2001) (rejecting the use of the date of the FOIA request as a cut-off). This limits the scope of information that the EPA must search to respond to the Center's FOIA Request by providing both the date range to search and the name of the record custodian, who is also the author and recipient. The Center also specified by phone that the subject matter of the request is Mr. Pruitt's conduct of official business.

Here also, the subject of the Center's request is the entirety of each correspondence that is sent to and from Mr. Pruitt, so the EPA's compliance with FOIA should involve virtually no guesswork. *See Shapiro v. CIA*, 170 F. Supp. 3d 147, 154 (D.D.C. 2016) (records reasonably described what requesters sought when they mentioned or referenced a specified person). There is no uncertainty about which records the Center is requesting: Mr. Pruitt's correspondence from

February 17, 2017 to the date of the EPA's search. A record is responsive if and only if it is sent to Mr. Pruitt or from Mr. Pruitt. The EPA's vague assertion that the agency could not process the Center's request given that the Center did not reasonably define a set of records to search is simply unpersuasive. The Center narrowly tailored its request to all correspondence by and to Mr. Pruitt since February 17, 2017. Even if the EPA searched for these records today, this time frame would be less than one month, and thus is not overly burdensome.

To reiterate, the Center seeks all of Mr. Pruitt's correspondence within an enumerated period. This description does not leave EPA staff guessing as to what records the Center is seeking, or forcing EPA staff to conduct independent research to uncover responsive records. Indeed, all that would be necessary to provide responsive emails, for example, would be going into Mr. Pruitt's email and putting everything since February 17, 2017 into a folder and processing it for disclosure. The same is true with his voicemails, phone logs, and letters. Thus, the EPA's denial of the Center's request is improper, and the agency must conduct a search.

II. THE EPA DID NOT SEARCH FOR RESPONSIVE RECORDS.

The EPA failed to conduct any search for responsive records. To achieve FOIA's core purpose of disclosure, an agency must perform an adequate search for all responsive records. *Founding Church of Scientology v. NSA*, 610 F.2d 824, 837 (D.C. Cir. 1979). An agency "must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). A court will apply "a 'reasonableness' test" to assess whether an agency's search for responsive records was adequate. *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 27 (D.C. Cir. 1998). This reasonableness test is "consistent with congressional intent tilting the scale in favor of disclosure." *Id.*

Here, because the EPA failed to conduct any search for responsive records, it did not conduct a search reasonably expected to return responsive records and is in violation of FOIA. Thus, to remedy its FOIA violation, the EPA must search for and release responsive records immediately.

III. CONCLUSION

The EPA improperly denied the Center's request for records and has not conducted any search for responsive records, let alone an adequate one. Accordingly, the EPA must search for and produce all responsive records immediately. In so doing, EPA must also provide an estimated date of completion of a determination on the Center's FOIA Request.

Last year, President Obama signed the FOIA Improvement Act of 2016, which firmly codifies a presumption of openness in the response of federal agencies to FOIA requests. The EPA continues to set a dismal example of thwarting the original intent of FOIA through bureaucratic obstructionism and purposeful delay. The events leading to this appeal are sadly an example of why the FOIA act improvements were so vitally needed, and we urge you to reconsider your approach to responding to FOIA requests, not in the narrow interests of preserving bureaucracy for its own sake, but for the public good as FOIA requires.

We expect your timely resolution of this matter. Do not hesitate to contact me with any questions regarding this appeal; please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret E. Townsend", with a stylized flourish at the end.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

Attachments:

- Attachment A: Attachment A (The Center's February 28, 2017 FOIA Request to EPA);
- Attachment B: Attachment B (EPA's March 1, 2017 Confirmation Email);
- Attachment C: Attachment C (EPA's March 1, 2017 Request Denial Email); and
- Attachment D: Attachment D (EPA's March 2, 2017 Denial Letter).

Attachment A



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

February 28, 2017

VIA FOIAONLINE.REGULATIONS.GOV

U.S. Environmental Protection Agency Headquarters

Re: Freedom of Information Act Request: EPA Administrator Scott Pruitt's Correspondence

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* ("FOIA"), from the Center for Biological Diversity ("Center"), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

The Center requests all of the following records from the U.S. Environmental Protection Agency ("EPA") since February 17, 2017: all correspondence, including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by the new EPA Administrator Scott Pruitt ("Mr. Pruitt") from any and all agency and EPA servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to or from Mr. Pruitt, with the exception of any records that are or will be publicly available (e.g., through regulations.gov). Please note, the Center is not requesting the actual email addresses utilized by Mr. Pruitt in the course of his official duties, but only the correspondence sent to and from his email addresses.

The Center seeks records of Mr. Pruitt's correspondence on EPA accounts or otherwise addressing work-related matters, all of which are "agency records." The Center notes that this request is sufficiently specific and narrow, requires no forwarding to other offices for processing, and is a "simple" request.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

Under rolling production we seek responsive records processed and produced independent of any others where no such production is dependent upon other records being released.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily-accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B). Please provide all records in a readily-accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records to:

Margaret Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
mtownsend@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please call me at (971) 717-6409 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The EPA's regulations at 40 C.F.R. § 2.107(1)(2) and (3) establish the same standard.

Thus, the EPA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns "the operations or activities of the Federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably-broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. 22 C.F.R. § 171.16(a)(1)(i) – (iv). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns the operations and activities of the new Administrator of the EPA. This request asks for all of the following records from the EPA since February 17, 2017: all correspondence, including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by the new EPA Administrator Scott Pruitt from any and all agency and EPA servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to or from Mr. Pruitt, with the exception of any records that are or will be

publicly available (e.g., through regulations.gov). Please note, the Center is not requesting the actual email addresses utilized by Mr. Pruitt in the course of his official duties, but only the correspondence sent to and from his email addresses.

This FOIA request will provide the Center and the public with crucial insight into the new EPA Administrator's correspondence. It is clear that Mr. Pruitt's communications involve extensive and specifically identifiable activities of the government, in this case the EPA. *Judicial Watch*, 326 F.3d at 1313 ("[R]easonable specificity is all that FOIA requires with regard to this factor") (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is "Likely to Contribute" to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey information to the public about the communications and correspondence of Mr. Pruitt, which will reflect his actions, objectives, and priorities as the new EPA head. Once the information is made available, the Center will analyze it and present it to its 1.2 million members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of how the new Administrator has been acting and operating within the EPA.

Thus, the requested records are likely to contribute to an understanding of the EPA's operations and activities under its new Administrator.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of Mr. Pruitt's Correspondence.

The requested records will contribute to public understanding of how the EPA's operations and activities are consistent with the EPA's mandated duties. As explained above, the records will contribute to public understanding of the EPA's operations and activities.

How the EPA fulfills its mission and manages its priorities, generally, and specifically what actions are included within Mr. Pruitt's communications, are areas of interest to a reasonably broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about the EPA's operations and activities. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) ("... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.").

Through the Center's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting

fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern Mr. Pruitt’s correspondence, that are not currently in the public domain – *e.g.*, in the docket on regulations.gov. *See Cmty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested documents “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”¹

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of Mr. Pruitt’s priorities and intentions as the new Administrator of the EPA. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the operations and activities of the EPA.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of the operations and activities of the EPA, as compared to the level of public understanding that exists prior to disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about what Mr. Pruitt’s communications demonstrate about his strategic planning, priorities, and course of action for the future of the EPA.

The records are also certain to shed light on EPA’s compliance with its mission and purpose. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center’s fee-waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public’s understanding of the government’s operations or activities; (2) that the information enhances the public’s understanding to a greater

¹ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision-making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, and *Los Angeles Times*. Many media outlets have reported on the changing priorities under the Trump Administration, utilizing information obtained by the Center from federal agencies. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 300 email newsletters and action alerts per year to more than 1.2 million members and supporters. Three times a year, the Center sends printed newsletters to more than 52,343 members. More than 180,000 people have "liked" the Center on Facebook, and there are regular postings regarding the incoming EPA Administrator, and how his leadership may have an impact on domestic environmental policy. The Center also regularly tweets to more than 49,000 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the EPA Administrator's duties and correspondence is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.2 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee-waiver. We hope that the EPA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, reading "Margaret E. Townsend". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

Attachment B

From: foia_hq@epa.gov
To: foia@biologicaldiversity.org
Subject: FOIA Request EPA-HQ-2017-004360 Submitted
Date: Tuesday, February 28, 2017 7:52:28 AM

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-HQ-2017-004360
- Requester Name: Margaret Townsend
- Date Submitted: 02/28/2017
- Request Status: Submitted
- Description: The Center requests all of the following records from the U.S. Environmental Protection Agency ("EPA") since February 17, 2017: all correspondence, including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by the new EPA Administrator Scott Pruitt ("Mr. Pruitt") from any and all agency and EPA servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to or from Mr. Pruitt, with the exception of any records that are or will be publicly available (e.g., through regulations.gov). Please note, the Center is not requesting the actual email addresses utilized by Mr. Pruitt in the course of his official duties, but only the correspondence sent to and from his email addresses. The Center seeks records of Mr. Pruitt's correspondence on EPA accounts or otherwise addressing work-related matters, all of which are "agency records." The Center notes that this request is sufficiently specific and narrow, requires no forwarding to other offices for processing, and is a "simple" request.

Attachment C

Virginia Vu

From: newton.jonathan@epa.gov
Sent: Wednesday, March 1, 2017 1:14 PM
To: foia@biologicaldiversity.org
Subject: FOIA EPA-HQ-2017-004360

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Margaret Townsend,

This email is in response to your Freedom of Information Act (FOIA) request, EPA-HQ-2017-004360, submitted February 28, 2017, filed with the U.S. Environmental Protection Agency. Your request seeks:

[A]ll of the following records from the U.S. Environmental Protection Agency ("EPA") since February 17, 2017: all correspondence, including but not limited to, all letters, emails, text messages, instant messages, voicemails, and phone logs for any phones utilized by the new EPA Administrator Scott Pruitt ("Mr. Pruitt") from any and all agency and EPA servers, cloud portals, secure websites, computers, tablets, smart phones, etc., sent to or from Mr. Pruitt, with the exception of any records that are or will be publicly available (e.g., through regulations.gov). Please note, the Center is not requesting the actual email addresses utilized by Mr. Pruitt in the course of his official duties, but only the correspondence sent to and from his email addresses. The Center seeks records of Mr. Pruitt's correspondence on EPA accounts or otherwise addressing work-related matters, all of which are "agency records."

Unfortunately, EPA cannot process your request at this time as it does not reasonably define a set of records to search as required by the FOIA and EPA regulations. 5 U.S.C. § 522(a)(3); 40 C.F.R. § 2.102(c). EPA regulations state that "whenever possible requesters should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter," and also that "[t]he more specific you are about the records or type of records you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.102(c). Your request fails to provide necessary details such as key terms, subject matters or titles.

You may contact Victor Farren at farren.victor@epa.gov or (202) 564-0808, to clarify your request. You may also withdraw and resubmit your request with sufficient specificity to allow EPA to search for responsive records. Please be aware that if we have not heard from you within two (2) weeks of the date of this email, we will assume that you are no longer interested in pursuing your request, and this file will be administratively closed.

If you consider this to be a denial, you may appeal this determination with an email to hq.foia@epa.gov or by writing to the National Freedom of Information Act Officer at:

U.S. Environmental Protection Agency

William Jefferson Clinton Federal Building

Records, FOIA and Privacy Branch

1200 Pennsylvania Avenue, NW (2822T)

Washington, D.C. 20460

Please note that correspondence mailed through only the U.S. Postal Service can be delivered to the address above. If you would like to deliver your appeal in person, via courier service or via an overnight-delivery service, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, D.C. 20001.

Your written appeal must be received no later than 90 calendar days from the date of this email and should include the request number listed above. The EPA will not consider appeals received after the 90 calendar-day limit. In addition, appeals received after 5 p.m. Eastern time are considered as having been received the next business day. For the quickest possible handling, the subject line of your email or the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Additionally, you may seek dispute-resolution services from the EPA's FOIA public liaison at hq.foia@epa.gov or (202) 566-1667 or from the National Archives and Records Administration's Office of Government Information Services. You may contact the Office of Government Information Services with an email to ogis@nara.gov; by calling toll free (877) 684-6448 or (301) 837-1996; with a fax to (301) 837-0348; or by mail to National Archives and Records Administration, Office of Government Information Services, 8610 Adelphi Road, Room 2510, College Park, Maryland 20740-6001.

Sincerely,

Victor Farren

Attorney Advisor

U. S. Environmental Protection Agency

Office of the Executive Secretariat

(202) 564-0808

Attachment D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF THE
EXECUTIVE SECRETARIAT

MAR 2 2017

Ms. Margaret Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374

Dear Ms. Townsend:

The Freedom of Information Act request you filed with the U.S. Environmental Protection Agency seeking copies of all of Administrator Pruitt's correspondence on all his EPA accounts regarding work related matters since February 17, 2017, was designated EPA-HQ-2017-004360 and assigned to the Office of the Administrator for response. The Office of the Administrator's final response is enclosed.

The Office of the Administrator sent you an email on March 1, 2017 indicating that the EPA could not process your request given that it did not reasonably define a set of records to search. The email also provided you an opportunity to further clarify your request. You telephoned me the same day, reiterating the terms of your request, along with the contention that the request reasonably defined a set of records subject to search. Since the EPA cannot process your request as currently constructed, your request is being denied.

If you have any concerns, you may appeal this final response with an email to hq.foia@epa.gov or by writing to the National Freedom of Information Act officer at:

U.S. Environmental Protection Agency
William Jefferson Clinton Federal Building
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460

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Sincerely,

A handwritten signature in black ink, appearing to read 'V. Farren', with a stylized flourish at the end.

Victor Farren
Attorney-Advisor